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## State v. Araiza Respondent's Brief Dckt. 34402

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

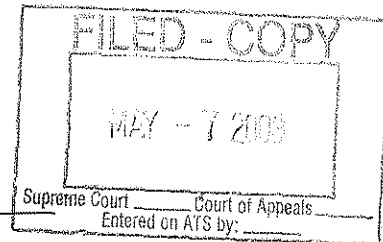
vs.

ROY ROLAND ARAIZA, SR,

Defendant-Appellant.

NO. 34402

**COPY**



BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF JEROME

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District Judge

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## STATEMENT OF THE CASE

### Nature Of The Case

Roy Roland Araiza appeals from his judgment of conviction for possession of a controlled substance and challenges the district court's order denying his motion to suppress evidence obtained from his person and belongings after he was observed breaking into his mother's house.

### Statement Of The Facts And Course Of The Proceedings

The uncontested facts underlying Araiza's charge for possession of a controlled substance (R., pp.4-5) are as follows:

At approximately 11:00 p.m. on December 3, 2006, Officers Dennis Clark of the Jerome City Police Department was patrolling on East Avenue F when he saw a male subject standing at a window of a residence. To Officer Clark, it appeared that the individual had either just left through the window or was attempting to enter the residence. Officer Clark stopped his vehicle and looked around the residence for the individual. When he could not find anyone, he knocked on the door of the residence. An elderly woman, later identified as Mary Mosqueda, answered and told the officer that the individual was inside the residence, .... [Footnote omitted] Officer Clark asked to speak to him. The individual came to the door and identified himself as Roland Araiza but said people called him Roy. Araiza did not have any identification but gave Officer Clark his social security number and his date of birth. Araiza admitted that he was at the window earlier. While Clark was talking to Araiza, Officer Baker of the Jerome Police Department arrived to assist. While Officer Clark returned to his vehicle to run a check with information given by Araiza, Officer Baker stayed at the door of the house with Araiza. While at the door, Araiza, who had come to the door only wearing jeans, which were unzipped (Tr., p.10, Ls.11-14), asked if he could go and put some clothes on. Officer Baker permitted him to do so at which time Araiza went back into the residence and closed the door. Officer Clark ran the check, but was unable to confirm the individual's identification with the information he had been given. When Clark returned to the house, Baker was standing at the closed door. The officers knocked, but no one answered the door and it was locked.

A female subject who lived to the west of the ... residence then arrived. She identified herself as the daughter of Mary Mosqueda, the owner of the house. The daughter told the officers that there should be no one in the residence except Ms. Mosqueda and her two young grandchildren. When shown the name of the defendant, Ms. Mosqueda said that she did not know anyone by that name. The officers kept knocking on the door and windows of the residence and also had the daughter attempt to telephone Ms. Mosqueda, but no one inside the residence would respond. A young man then drove up to the house, later identified as Ms. Mosqueda's grandson. He also told the officers that he didn't recognize the name of the subject in the house and that no one should have been in the house except his grandmother. Officer Clark testified that at this point the officer's were concerned for the safety of the individuals in the house because no one should have been in the house except Ms. Mosqueda and her two grandchildren and no one recognized the name of the man the officers had seen outside of a window earlier that evening. The officers then made forcible entry into the home.

(R., pp.27-29; see also R., pp.6-11.) The officers found the defendant in the back bedroom with Ms. Mosqueda. (R., p.29.) Araiza was arrested for obstructing a police investigation and the officers asked if Araiza had any clothing that should go with him. (R., p.29.) Ms. Mosqueda took the officers to another bedroom and pointed to a jacket and a white leather bag on the floor, unzipped and open, with a glass pipe with burn residue clearly visible. (R., p.29.) A search of the bag revealed numerous watches, jewelry, rings, more drug paraphernalia and methamphetamine. (R., p.29.)

Araiza was charged with a felony, possession of methamphetamine under I.C. § 37-2732(c)(1), and a misdemeanor, possession of drug paraphernalia under I.C. § 37-2734A. (R., pp.4-5, 16-17.) Araiza waived his preliminary hearing and was bound over to the district court on both charges. (R., pp.14, 18.)



Araiza filed a motion to suppress, asserting the officers did not have a search warrant and there was no exigent circumstance justifying warrantless entry into his mother's home (R., pp.21-22), which the district court denied following a hearing (R., pp.27-34; Tr., pp.4-69). Araiza entered a conditional guilty plea to possession of methamphetamine, reserving his right to appeal the denial of his motion to suppress. (R., pp.41-42.) The district court ordered a presentence investigation report. (R., pp.43-44.) At the sentencing hearing, after reviewing the presentence report and arguments of counsel, the district court sentenced Araiza to seven years in prison, with one year fixed. (R., pp.53-59.) The state moved to dismiss the misdemeanor charge, which the district court granted. (R., p.60.) Araiza filed a timely notice of appeal. (R., pp.63-65.)

## ISSUES

Araiza states the issues on appeal as:

Did the district court err in denying Mr. Araiza's motion to suppress the warrantless entry into his residence and arrest of his person in violation of the Fourth Amendment of the United States Constitution and Article 1, § 17 of the Idaho Constitution?

(Appellant's brief, p.7.)

The state rephrases the issues as:

Ms. Mosqueda's daughter and grandson did not recognize the name of the man, Roy Roland Araiza, with Ms. Mosqueda and two of her grandchildren in her home. Ms. Mosqueda, her grandchildren, and Araiza did not respond to repeated telephone calls and knocks at the doors and windows. Should this Court affirm the district court's order denying Araiza's motion to suppress because, in light of the facts, exigent circumstances justified the entry into Ms. Mosqueda's home to ensure her and her grandchildren's safety and there was probable cause to arrest Araiza?

## ARGUMENT

### The District Court Correctly Concluded That The Entry Into Ms. Mosqueda's House Was Justified Under The Exigent Circumstances Exception To The Warrant Requirement

#### A. Introduction

Araiza claims that Ms. Mosqueda was not in any distress and that she told the officers that the man outside one of her windows was her son. (Appellant's brief, pp.12-13.) Araiza contends the district court erred in determining, "based on testimony from the officers that they were concerned for the welfare of Ms. Mosqueda and the children in the residence, and the testimony from Officer Clark that two relatives allegedly could not identify Mr. Araiza's name, the officers' actions were appropriate and an exigent circumstance existed." (Appellant's brief, pp.10-11.) Contrary to Araiza's contention, the district court properly considered the testimony of the officers and Ms. Mosqueda, and found Ms. Mosqueda's testimony that she told the officers the subject was her son was not reliable because she was "on a lot of medication at the time due to surgery and could not remember the details of the incident too well." (R., p.28, n.1.) Relying on the officers' testimony, the district court also found Araiza had told his mother not to respond to the officers' knocks at the doors and windows. (R., pp.32-33.) The district court's factual findings are supported by substantial and competent evidence. The district court concluded that the police had reason to believe that Araiza had unlawfully entered Ms. Mosqueda's home and was preventing her and her grandchildren from responding to attempts to contact them, creating an exigent circumstance. The relevant factual findings of the district court are not

challenged as clearly erroneous on appeal. Rather, the district court's factual findings are supported by the evidence. Likewise, the district court's conclusions are supported by the application of the relevant law to the facts it found. Thus, the district court properly denied Araiza's motion to suppress.

B. Standard Of Review

The standard of review of a motion to suppress is bifurcated. State v. Rader, 135 Idaho 273, 275, 16 P.3d 949, 951 (Ct. App. 2000). The standard of appellate review applicable to constitutional issues is one of deference to factual findings, unless they are clearly erroneous, but free review of whether constitutional requirements have been satisfied in light of the facts found. State v. Julian, 129 Idaho 133, 135, 922 P.2d 1059, 1061 (1996); State v. Atkinson, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). On a denial of a motion to suppress the appellate court will overturn a trial court's factual findings only if they are clearly erroneous. Doe v. State, 131 Idaho 851, 853, 965 P.2d 816, 818 (1998). In addition, the appellate court gives due deference to any implicit findings of the trial court supported by substantial evidence. State v. Duvalt, 131 Idaho 550, 553, 961 P.2d 641, 644 (1998).

C. The District Court Correctly Applied The Law To The Facts In Concluding Exigent Circumstances Justified the Warrantless Entry Into Ms. Mosqueda's Home

1. The Exigent Circumstances Exception To The Warrant Requirement Applies Where The Facts Known To The Police, With Reasonable Inferences Drawn From Those Facts, Would "Warrant A Man Of Reasonable Caution In The Belief" That The Action Taken Was Appropriate

Although warrantless searches are presumed to violate the Fourth Amendment, because the ultimate touchstone of the Fourth Amendment is "reasonableness," the warrant requirement is subject to certain exceptions. Brigham City, Utah v. Stuart, 547 U.S. 398, 403 (2006). Exigent circumstances, such as to "fight a fire and investigate its cause, *Michigan v. Tyler*, 436 U.S. 499, 509, ... (1978), to prevent the imminent destruction of evidence, *Ker v. California*, 374 U.S. 23, 40, ... (1963), or to engage in 'hot pursuit' of a fleeing suspect, *United States v. Santana*, 427 U.S. 38, 42-43, ... (1976), is a recognized exception to the warrant requirement." *Id.* at 403. Police also do not need a warrant when they reasonably believe there is a compelling need for official action and no time to secure a warrant, such as when there is a risk of danger to persons inside a building. *Id.* at 403; State v. Pearson-Anderson, 136 Idaho 847, 849, 41 P.3d 275, 277 (Ct. App. 2001) (citing *Michigan v. Tyler*, 436 U.S. 499, 509 (1978); Minnesota v. Olson, 495 U.S. 91, 100 (1990)); see also Georgia v. Randolph, 547 U.S. 103, 118, (2006) ("[I]t would be silly to suggest that the police would commit a tort by entering ... to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur") (quoted in Brigham City, Utah, 547 U.S. at 403-404). A court evaluating a claim that exigent

circumstances justified a warrantless search should determine whether the facts known to the police, with reasonable inferences drawn from those facts, would "warrant a man of reasonable caution in the belief" that the action taken was appropriate. Pearson-Anderson, 136 Idaho at 850, 41 P.3d at 278 (citing State v. Monroe, 101 Idaho 251, 254, 611 P.2d 1036, 1039 (1980) (quoting Terry v. Ohio, 392 U.S. 1, 21-22 (1968))). "An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed objectively, justify [the] action.'" Scott v. United States, 436 U.S. 128, 138 (1978). Courts should avoid second-guessing police decisions made in legitimate belief that life may very well be at stake. Pearson-Anderson, 136 Idaho at 850, 41 P.3d at 278 (citing Monroe, 101 Idaho at 255, 611 P.2d at 1040; State v. Wiedenheft, 136 Idaho 14, 16, 27 P.3d 873, 875 (Ct. App. 2001)).

2. The District Court's Factual Findings Are Supported By Substantial And Competent Evidence

In this case on December 3, 2006, at 11:00 p.m., Jerome Police Officer Dennis Clark was driving his patrol car when he saw a man in dark clothing standing at the rear window of a residence apparently entering or leaving. (Tr., p.6, Ls.15-21.) Officer Clark drove past the residence again, but was unable to locate the man (Tr., p.6, L.21 – p.7, L.1); so he called for assistance (Tr., p.7, Ls.3-5). Officer Clark knocked on the door of the residence and an elderly woman, later identified as Mary Mosqueda, answered. (Tr., p.7, L.10 – p.8, L.2.) Ms. Mosqueda indicated she was okay and the man who had been outside her

home, Roland who goes by Roy, was now inside. (Tr., p.8, Ls.5-19; p.9, Ls.6-8; p.29, L.15-18; p.30, L.25 – p.31, L.1.) At Officer Clark's request, she walked back into the house to ask the man to come to the door, where he appeared, wearing only unzipped jeans, identified himself as Roland Araiza, added "it's actually Roy Araiza," admitted he had been outside at the window, and gave a social security number and date of birth. (Tr., p.9, L.22 – p.11, L.6; p.31, Ls.12-22; p.45, Ls.18-24.) Jerome Police Officer James Baker arrived at the door and Officer Clark asked Araiza to stay at the door with Officer Baker while he checked Araiza's information. (Tr., p.11, Ls.7-10.) After Officer Baker agreed to Araiza's request to go get a shirt, Araiza closed the door. (Tr., p.41, Ls.8-14; see p.13, Ls.15-19.) Officer Clark was unable to confirm Araiza's information. (Tr., p.12, Ls.1-5; p.13, Ls.7-13.)

Officers Clark and Baker knocked on the door, and continued to do so for several minutes, but received no response. (Tr., p.13, L.12 – p.14, L.7; p.41, L.18-19.) While the officers were knocking, a woman who identified herself as Ms. Mosqueda's daughter, approached the officers. (Tr., p.14, Ls.9-12; p.15, Ls.3-4; p.34, Ls.19-21.) She said she did not know Roy Araiza and that no one should be in the home with her mother other than her own two sleeping children. (Tr., p.15, Ls.10-16; p.34, L.22 – p.35, L.5), raising the officer's concern for the safety of Ms. Mosqueda and her grandchildren (Tr., p.16, Ls.3-10; p.42, Ls.6-11). She tried to call her mother on her cellular telephone and knocked on the door, but received no answer. (Tr., p.15, L.21 – p.16, L.1.) A younger man arrived on the scene, identifying himself as Ms. Mosqueda's grandson. (Tr., p.16, Ls.12-14;

He also indicated he did not recognize the name "Roy Araiza" and stated that no other adult should be in his grandmother's home. (Tr., p.17, Ls.2-5; p.42, Ls.9-11.)

After several minutes of knocking at the doors and windows and calling into the house with no response, although the officers could tell that people were in the southwest corner of the house (Tr., p.17, Ls.12-17; p.35, Ls.1-3; p.41, Ls.20-24; p.42, Ls.12-23; p.43, Ls.3-4) the officers, concerned that Ms. Mosqueda and her grandchildren were in danger and being held against their will by Araiza (Tr., p.17, Ls.19-20; p.43, Ls.1-2), decided to break down the door to render assistance (Tr., p.18, Ls.2-3; p.43, Ls.4-16, 19-23).

Upon entering, the officers found Araiza in the southwest corner bedroom with Ms. Mosqueda. (Tr., p.18, Ls.9-11.) After Araiza was handcuffed, Ms. Mosqueda told the officers Araiza would not let anyone answer the door. (Tr., p.19, Ls.7-12.)

Officer Clark asked Ms. Mosqueda if Araiza had any clothing that should go with him, and she led the officer to the opposite bedroom and pointed to a coat/jacket. (Tr., p.19, Ls.15-24.) Officer Clark asked Ms. Mosqueda if anything else belonged to Araiza, since he did not live there, and she pointed to an unzipped white leather duffle bag in which a glass pipe with whitish burnt methamphetamine-like residue was lying in plain sight. (Tr., p.20, Ls.1-15.) The officer took the bag to the kitchen and went through the contents, finding watches and rings taken from family members, as well as drug paraphernalia, and methamphetamine. (Tr., p.20, L.17 – p.21, L.8.) The family members identified



the watches and rings as being stolen from them, but did not want to press charges. (Tr., p.21, Ls.4-8.) Officer Clark returned to watches and rings to the family members. (Tr., p.21, Ls.4-8.)

At the jail, Araiza waived his Miranda rights and said the white leather duffle bag belonged to his mother and that he was using it to hold things, including the drugs and paraphernalia, which he identified as either belonging to him or what he had just recently stolen from another residence. (T., p.21, L.15 – p.22, L.18.)

At the suppression hearing, Ms. Mosqueda, who admitted she was under a lot of medication and “I can’t really remember a lot of stuff” (Tr., p.60, L.23 – p.61, L.1), testified that she identified Araiza as her son when the police first contacted her (Tr., p.57, Ls.10-14). Ms. Mosqueda also testified that Araiza had been living with her since July (Tr., p.53, Ls.2-8), but he did not have a key (Tr., p.56, L.23-25) and did not have his own room; he was sleeping in her grandson Marky’s room (Tr., p.65, Ls.14-25). Ms. Mosqueda’s testimony about not answering the door or telephone after Araiza shut the door was bizarre; she said “I did hear the phone” but “I kept turning it off,” and “I just didn’t want to be able to talk to anybody. I couldn’t talk to anybody.” (Tr., p.66, L.15 – p.67, L.4.)

Officer Clark testified he recalled that Ms. Mosqueda, when she answered the door, identified Araiza as Roland and Roy, but he did not believe Ms. Mosqueda ever identified Araiza as her son. (Tr., p.29, Ls.15-25.) Officer Baker testified that Araiza never said he lived in his mother’s house. (Tr., p.47, Ls.2-18.) Araiza did not testify.

From the evidence adduced at the suppression hearing, the district court found the following facts:

At approximately 11:00 p.m. on December 3, 2006, Officers Dennis Clark of the Jerome City Police Department was patrolling on East Avenue F when he saw a male subject standing at a window of a residence. To Officer Clark, it appeared that the individual had either just left through the window or was attempting to enter the residence. Officer Clark stopped his vehicle and looked around the residence for the individual. When he could not find anyone, he knocked on the door of the residence. An elderly woman, later identified as Mary Mosqueda, answered and told the officer that the individual was inside the residence, but did not identify the person.[footnote 1] Officer Clark asked to speak to him. The individual came to the door and identified himself as Roland Araiza but said people called him Roy. Araiza did not have any identification but gave Officer Clark his social security number and his date of birth. Araiza admitted that he was at the window earlier. While Clark was talking to Araiza, Officer Baker of the Jerome Police Department arrived to assist. While Officer Clark returned to his vehicle to run a check with information given by Araiza, Officer Baker stayed at the door of the house with Araiza. While at the door, Araiza, who had come to the door only wearing jeans, which were unzipped (Tr., p.10, Ls.11-14), asked if he could go and put some clothes on. Officer Baker permitted him to do so at which time Araiza went back into the residence and closed the door. Officer Clark ran the check, but was unable to confirm the individual's identification with the information he had been given. When Clark returned to the house, Baker was standing at the closed door. The officers knocked, but no one answered the door and it was locked.

[Footnote 1 text] Ms. Mosqueda testified that she told the officer that the subject was her son. However, she also testified that she was on a lot of medication at the time due to surgery and could not remember the details of the incident too well.

A female subject who lived to the west of the ... residence then arrived. She identified herself as the daughter of Mary Mosqueda, the owner of the house. The daughter told the officers that there should be no one in the residence except Ms. Mosqueda and her two young grandchildren. When shown the name of the defendant, Ms. Mosqueda said that she did not know anyone by that name. The officers kept knocking on the door and windows of the residence and also had the daughter attempt to telephone Ms.

Mosqueda, but no one inside the residence would respond. A young man then drove up to the house, later identified as Ms. Mosqueda's grandson. He also told the officers that he didn't recognize the name of the subject in the house and that no one should have been in the house except his grandmother. Officer Clark testified that at this point the officer's were concerned for the safety of the individuals in the house because no one should have been in the house except Ms. Mosqueda and her two grandchildren and no one recognized the name of the man the officers had seen outside of a window earlier that evening. The officers then made forcible entry into the home. Upon entering the home, the officers discovered the defendant in a back bedroom with Ms. Mosqueda. When asked why she did not answer the door, Ms. Mosqueda told the officers that the defendant had told her not to. The officers then arrested the defendant for obstructing a police investigation. Because the defendant was only wearing a pair of jeans, the officers asked Ms. Mosqueda if there were any clothes that they could take for the defendant. Ms. Mosqueda took the officers to another bedroom and pointed to a jacket. While in the bedroom the officers noticed a white leather bag on the floor, unzipped and open, with a glass pipe with burn residue clearly visible. Ms. Mosqueda said that the bag was the defendant's. A search of the bag revealed numerous watches, jewelry, rings, more drug paraphernalia and methamphetamine

(R., pp.27-29; see also R., pp.6-11.) The district court's factual findings are supported by substantial and competent evidence.

In light of the foregoing testimony, the district court properly found the officer's testimony more credible than Ms. Mosqueda's testimony. "On a suppression motion, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court." State v. Dominguez, 137 Idaho 681, 684, 52 P.3d 325, 328 (Ct. App. 2002). An appellate court will not substitute its view of the credibility of witnesses for that of the finder of fact. State v. Robertson, 134 Idaho 180, 185, 997 P.2d 641, 646 (Ct. App. 2000). Araiza has failed to establish the district court's factual findings are clearly erroneous.

3. The District Court Correctly Applied The Law In Denying Araiza's Motion To Suppress The Evidence Of Drugs And Paraphernalia Discovered In His Mother's House Where He Had Allegedly Been Staying

The district court concluded:

It is clear from the facts of this case that the officers were well justified in their concern for the well-being of the individuals inside of the residence given the information before them at the time. Officer Clark had seen a man at a window that appeared to be trying to enter the residence, the occupants of the house, while seeming to be under no distress when the officers first went to the door, refused to open the door, answer the phone or respond to the knocking on the windows, the daughter and grandson of Ms. Mosqueda told the officers that there should be no one in the residence except Ms. Mosqueda and her two young grandsons, and they also told the officers that they did not recognize the name of the man inside the house with Ms. Mosqueda. These facts justify the actions of the officers in entering the residence without a warrant to ensure the safety of the citizens found within.

(R., p.31.) The district court's conclusion that exigent circumstances justified the warrantless entry into Ms. Mosqueda's home is consistent with Idaho law. If the purpose of the entry is to prevent injury or protect life, then probable cause to arrest or search is not required. See e.g. State v. Wiedenheft, 136 Idaho 14, 16, 27 P.3d 873, 875 (Ct. App. 2001) (warrantless entry into home justified where officers responded to a 911 hang-up call regarding domestic violence and the defendant had a red swollen spot on her forehead); State v. Sailas, 129 Idaho 432, 925 P.2 1131 (Ct. App. 1996) (warrantless entry into defendant's apartment was justified by the need to prevent additional injury to defendant's girlfriend and injury to her child where police responded to a report of a domestic disturbance and it was evident that the two adults had been fighting previously but indicated no assistance was needed). In light of Officer Clark's observation of a man at a

rear window of the home, his disappearance, his appearance at the door wearing only unzipped jeans after the home owner called him to the door and, later, the homeowner's daughter and grandson telling the police they did not recognize the name of the man and that no one should be in the home except the owner and her two grandchildren, coupled with the chilling lack of response to the knocks on the doors and windows and telephone calls, the officers acted reasonably in entering the home without a warrant to ensure that Ms. Mosqueda and her two grandchildren were safe.

D. The District Court Correctly Applied The Law To The Facts In Concluding The Officers Had Probable Cause To Arrest Araiza

Araiza did not challenge his arrest in his motion to suppress (R., pp.21-22), and the issue is not relevant to the search of the white duffle bag given that Araiza said the white leather duffle bag belonged to his mother and that he was using it to hold things, including the drugs and paraphernalia, which he identified as either belonging to him or what he had just recently stolen from another residence (T., p.21, L.15 – p.22, L.18). Nevertheless, the district court addressed the issue, concluding there was probable cause to arrest Araiza for obstructing and delaying an officer, I.C. § 18-705. (R., pp.31-33.)

The trial court correctly applied the law in so concluding. See State v. Hollon, 136 Idaho 499, 502, 36 P.3d 1287, 1290 (Ct. App. 2001) (“[t]he requirement of probable cause does not mean that the arresting officer must have sufficient evidence to secure a conviction.”) “The legality of an arrest is not dependent upon the State’s failure to successfully prosecute a defendant for the

suspected crime.” 136 Idaho at 502 n.1, 36 P.3d at 1290 n.1. (citing Draper v. United States, 358 U.S. 307, 312 (1959) and State v. Zentner, 134 Idaho 508, 511, 5 P.3d 488, 491 (Ct. App. 2000) (both discussing the difference between the beyond a reasonable doubt standard of proof and probable cause to arrest)). The test is whether “the facts and circumstances within the officer’s knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense.” Id. (internal brackets omitted.)

The officers were justified in detaining Araiza at the door of the residence on suspicion of unlawful entry, I.C. § 18-7034, and his act of closing the door and preventing the Ms. Araiza or her grandchildren from answering the door and telephone gave rise to probable cause to believe he was obstructing and delaying an officer, I.C. § 18-705, conducting a lawful investigation. Additionally, the officers also had probable cause to arrest Araiza for false imprisonment, I.C. § 18-2901, or kidnapping, I.C. § 18-4501, based upon Ms. Mosqueda’s statement to the police that Araiza would not let anyone answer the door. (Tr., p.19, Ls.7-12.)

Upon Araiza’s lawful arrest, Officer Clark asked Ms. Mosqueda if Araiza had any clothing that should go with him, and she led him to another bedroom and pointed out a coat/jacket and an unzipped white leather duffle bag in which drug paraphernalia was in plain view. (Tr., p.19, L.15 – p.21, L.15.) When the officer searched the open bag, he found watches and rings Araiza has stolen

from the home, as well as more drug paraphernalia, and methamphetamine.  
(Tr., p.20, L.17 – p.21, L.8.)


E. Summary

The entry into Ms. Mosqueda's home was justified under the exigent circumstances exception to the warrant requirement. Upon entering the officers had probable cause to arrest Araiza. Accordingly, Araiza's methamphetamine in the white leather bag, which belonged to his mother, was not subject to suppression under the exclusionary rule.

CONCLUSION

The state respectfully requests this Court to affirm Araiza's conviction and sentence by upholding the district court's order denying Araiza's motion to suppress.

DATED this 7<sup>th</sup> day of May 2008.

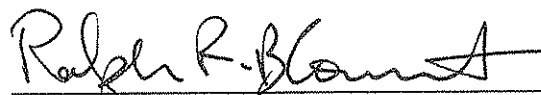
  
RALPH R. BLOUNT  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7<sup>th</sup> day of May 2008, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

ERIC D. FREDERICKSEN  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in the State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

A handwritten signature in black ink, reading "Ralph R. Blount", with a horizontal line underneath.

RALPH R. BLOUNT  
Deputy Attorney General

RRB/pm